**CANTERBURY 2024: THE CHURCH AND SOCIAL JUSTICE**

**REBUILDING CIVIL SOCIETY IN BRITAIN**

We probably all start from the proposition that social cohesion in this or any other society depends upon more than economic prosperity. It must also depend upon a shared set of values – views about what makes a good society to which most of us can aspire. Politicians seem to think that there is a distinctive set of British values, so I googled them to find out what the government thought they were. Guidance for schools published ten years ago contains five: democracy, the rule of law, individual liberty, mutual respect, and tolerance for those with different faiths and beliefs. But these are not simple ideas. Nor is it clear that the government itself is always sympathetic to them.

Let's start with democracy: literally, rule by the people – either directly or through their elected representatives. But the will of the people is usually equated with the will of the majority. And in the British Constitution, the will of the majority is equated with the will of the political party which won the most seats in the most recent general election. That party controls the House of

Commons. The House of Lords is led by the ruling party, but not controlled by it to the same degree. But in the end it will almost always defer to the will of the elected chamber – as has just happened with the Safety of Rwanda (Asylum and Immigration) Act. Our fundamental constitutional principle is that the King-in-Parliament is sovereign. It can make or unmake any law - no matter how much such a law may conflict with other deeply held British values – as I believe the Rwanda Act does.

In the Westminster model of a democratic constitution, it goes further than that. The executive government consists of Members of Parliament who belong to the political party which can command a majority in the House of Commons. This means that the government of the day can almost always get its way – and often has more to fear from its own members than it has from the Opposition, again as we have seen with the Rwanda Bill.

Now we can argue at length about whether the will of the political party which won the most seats in the general election really reflects the will of the majority of the people – there are plenty of reasons to think that it does not do so, at least all the time.[1] But the point I want to make is that democracy is – or should

[1] Caroline Lucas argues that the 'archaic and unfair first-past-the-post voting system, and the constitution more widely, works so effectively to *prevent* the will of the people being reflected in our governments': *Another England*, Hutchinson Heinemann 2024, p 69.

be - about more than the will of the majority of the people. I put it this way in a case called *Ghaidan v Godin Mendoza* in 2004:[2]

'Democracy is founded on the principle that each individual has equal value. Treating some as automatically having less value than others not only causes pain and distress to that person but also violates his or her dignity as a human being. . . . Such treatment is [also] damaging to society as a whole. Wrongly to assume that some people have talent and others do not is a huge waste of human resources. It also damages social cohesion, creating not only an under-class but an under-class with a rational grievance. . . It is the reverse of the rational behaviour we now expect of government and the state . . . Finally, it is a purpose of all human rights instruments to secure the protection of the essential rights of members of minority groups, even when they are unpopular with the majority. Democracy values everyone equally even if the majority does not.'

That case happened to be about whether the survivor of a same sex relationship could succeed to a Rent Act protected tenancy as a person who had been living with the deceased tenant 'as his or her wife or husband'. We held that he could. This engaged the right to respect for a person's home, guaranteed by article 8 of the European Convention on Human Rights. Article 14 of the Convention states that the enjoyment of the Convention rights must be secured without

[2] [2004] UKHL 30, [2004] 2 AC 557, para 132.

discrimination on a long and open-ended list of grounds, including race, sex and 'other status', which has long been held to include sexual orientation.

We can argue about the content and meaning of the individual human rights. But the point is that throughout the western world it is accepted that there are certain fundamental human rights which must be protected in any democracy whether the majority likes it or not. Most modern definitions of democracy reflect this. But does our government accept it? British lawyers played a large part in drafting the European Convention. The UK was amongst the first to sign and ratify it. We recognised the right of individuals to petition the European Court of Human Rights in 1966 and with it the duty to accept its judgments. We translated the rights contained in the Convention from rights enforceable only in international law to rights enforceable in UK law by the Human Rights Act 1998. Yet we hear politicians describing the Court, not as an international court to which we are bound by international law, but pejoratively as a 'foreign court'. There was an attempt to replace the Human Rights Act with a British Bill of Rights which would have watered down the protection given to the Convention rights in UK law. And no sooner was that attempt abandoned than there was the more sinister disapplication of the Human Rights Act in the particular context of immigration and asylum.

Thus the Illegal Migration Act 2023 means that anyone who requires leave to enter or remain in the UK but does not have it must be detained and deported. They are unable to make a claim for asylum under the Refugee Convention, or for the violation of their human rights, or for protection from slavery or human trafficking, or otherwise claim that their treatment is unlawful, save on very narrow grounds set out in the Act. The Safety of Rwanda Act takes that further by requiring all decision-makers – government ministers, civil servants, courts or tribunals – to assume that Rwanda is a safe country to which to remove such people whether or not it is in fact safe.

More than ten years ago, Human Rights Professor Conor Gearty posited an extreme right-wing government 'which leaves the structures untouched but goes after immigrants and asylum seekers in a dramatically aggressive way'. In a system based on the British model, the law could do next to nothing to prevent this. But he suggested that 'the culture of human rights, rooted in legal practice but also in society's common sense of basic standards, serves to support the ethical status quo against such plunges into extremism'.[3] This seems unduly optimistic, but we can hope that 'society's common sense of basic standards' will prevail.

[3] 'Spoils for which victor? Human rights within the democratic state', in C Gearty and C Douzinos (eds), *The Cambridge Companion to Human Rights Law*, Cambridge, Cambridge University Press, 2012, pp 227-228.

This brings me to the second of our claimed great British values – the rule of law. Politicians sometimes confuse this with 'law and order' but it is much more than that. The rule of law means that everyone – all people and all organisations - can enjoy the powers, rights or freedoms which the law gives them but that they must also observe the duties, obligations or restrictions which the law imposes upon them. It means, as the great Aharon Barak, President of the Supreme Court of Israel put it, that law is everywhere. It means that there can be no secret laws, known only to a few: everyone must be able to discover what the law is. It means that there must be a functioning justice system which is there for everyone, to enable them to enforce or vindicate their rights and obligations. It means that everyone must have meaningful access to that justice system. It means that the justice system itself must be fair and unbiassed – it must decide cases, in the words of the judicial oath, 'according to the laws and usages of this realm, without fear or favour, affection or ill will'. It means that the justice system must be completely independent of government – no government minister can tell the courts what to do or how to do it. And it means that everyone is subject to the law, the government as well as the people and organisations it governs. No-one is above the law. No-one has unlimited power.

But how stands respect for the rule of law amongst those who govern us today? There has been a tendency amongst governments of all political persuasions to

regard the justice system as just another public service – like refuse collection or road-mending – of benefit to those who use it but not of benefit to society as a whole. This is a misunderstanding. Obviously, the decisions of the courts are of benefit to society as a whole if they lay down rules of general application – such as the famous rule in *Donoghue v Stevenson*[4] that manufacturers of consumer goods must take reasonable care that their products do not cause harm to their consumers. But it is more than that, as my successor, Lord Reed, explained in *R (Unison) v Lord Chancellor* in 2017:[5]

'People and businesses need to know, on the one hand, that they will be able to enforce their rights if they have to do so, and, on the other hand, that if they fail to meet their obligations, there is likely to be a remedy against them. It is that knowledge which underpins everyday economic and social relations.'

So the rule of law and the justice system are not just a 'nice to have' – the product of an advanced modern society – they have been one of the two basic requirements of a functioning state for centuries (the other being the defence of the realm from foreign adversaries). This is not always well understood in government, which has neglected the justice system for most of this century.

4 [1932] AC 562, where an alleged snail in a bottle of ginger beer laid the foundations of the modern law of negligence.

5 [2017] UKSC 51, [2020] AC 869, para 71.

But it can be worse than that. There has sometimes been a shocking tendency to undermine respect for the rule of law and the justice system.[6] I don't mean reasoned and sensible criticism of the courts and judicial decisions – nobody should be immune from that. But think of the headline in the *Daily Mail* describing the Lord Chief Justice, the Master of the Rolls, and another senior Judge as 'enemies of the people' for reaching a decision which was later upheld in the Supreme Court. Think of the abject failure of the then Lord Chancellor to leap to their defence although she had sworn an oath to do so. Think of the unwarranted criticism of certain judicial decisions by a recent Attorney General. Think of the suggestions by another recent Lord Chancellor that the Supreme Court had become more sympathetic to the views of government in recent times (as is undoubtedly the case) because of the criticism and threats which it had received after the famous prorogation decision in 2019. Think of the suggestion by another recent Lord Chancellor that the government should be given power to ignore judicial decisions that it did not like. Think of the suggestion by a vice-chairman of the Conservative party that the government should ignore the ruling of the Supreme Court that sending people to Rwanda would be unlawful and simply do it anyway.

[6] Most of the examples given here can be found in All-Party Parliamentary Group on Democracy and the Constitution, 'Inquiry into the impact of the actions and rhetoric of the Executive since 2016 on the constitutional role of the Judiciary,' Institute for Constitutional and Democratic research, 2022.

All of this is bad enough but is unlikely to deter the courts from doing the job that they are sworn to do. More insidious is the denial of certain people's access to the courts to complain that their rights have been or will be violated. The Rwanda Act only allows individuals to go to court if there is compelling evidence that Rwanda is not a safe country for them individually – not that it is unsafe in general or for a particular group to which they belong. It only allows the court to grant an interim remedy to prevent removal if satisfied that the individual would face a real, immediate and foreseeable risk of serious and irreversible harm. If an individual tries to get round this by complaining to the European Court of Human Rights that his fundamental rights will be violated by removal, the European Court may decide to issue what's known as a Rule 39 notice in an attempt to preserve the status quo pending its determination. But the Minister has a choice whether or not to comply with this – as I pointed out at committee stage in the House of Lords, 'As a matter of sovereignty, it would be odd indeed if an international court could grant relief to people within the United Kingdom when our own courts and tribunals have been *deprived by statute of any say at all.*' Be that as it may, the Act contemplates that the UK government will not comply with its obligations in international law, which are just as binding on it as its obligations in national law. Indeed, the government is very fond of extolling

the virtues of the international rule-based order and exhorting other countries to comply.

And what of the third claimed British value – individual liberty? There are of course lots of different liberties protected by the European Convention – freedom of thought, conscience and religion, of expression, of assembly and association, for example. But when we talk of liberty we tend to mean freedom from being locked up – protected by article 5 of the Convention. This too is being denied to the people covered by the Illegal Migration Act. Article 5 permits the lawful arrest and detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition. But it does not permit such people to be deprived of the right to challenge the lawfulness of their detention in court. Yet the legislation severely curtails this right. And it is noteworthy that the government was under severe pressure from its own back benchers to remove altogether the right of these people to go to court – they saw the possibility of any challenges to the legality of deportation as undermining the deterrent effect. Even the government argued that there was a risk of bogus claims clogging up the system and preventing or delaying removal indefinitely. No-one denies that there are some bogus claims. But there are also justified claims which are being denied a hearing by these provisions.

So what about our fourth British value – mutual respect? We used to understand that many, perhaps most, of the genuine asylum seekers who came to this country came here or stayed here without the required permission. The head of the Scottish Refugee Council came here from Afghanistan as a teenager in the back of a lorry. Now it seems that we – or at least the people in power - are no longer so tolerant of the very people who are being exploited by the people traffickers and seek to solve the problem by deterring and punishing them rather than their exploiters. But is it only this group who are being singled out as unworthy of the great British virtue of respect?

I fear that it is not. In recent years we have made great strides in promoting equal treatment for previously disadvantaged or marginalised groups – women, people from ethnic minorities, people with disabilities, LGBTQI+ people, and others with what the Equality Act 2010 calls protected characteristics. We have recognised, not only their right to equal treatment, but that diversity can bring benefits, not only to society in general, but also to particular enterprises. We know, for example, that diversity is good for the judiciary and the justice system. And with diversity must come inclusion – recognising people for what they can bring to the enterprise rather than expecting them to fit in – to be 'one of the boys' as the male judges used to expect the women to be. But what did I read the other day? That efforts to promote equality, diversity and inclusion in the

public services must be scaled down; that civil servants are to be prohibited from wearing rainbow lanyards to show their support for the LGBTQI+ community;[7] that a recent Times leader believes that 'the vast majority of Britons do not require instruction on how to treat colleagues with different ethnic, religious and sexual identities, having long ago ceased caring'.[8] I'm not sure that everyone in the Yorkshire cricket team would agree.

Which leads me to the fifth British value – tolerance for those of different faiths and beliefs. Again, I think that we have made great strides in recent years. This could be because Britain – or at least England – is one of the least religious countries in Western Europe. In the 2001 Census, 71.7% of people in England and Wales described themselves as Christian; by 2011 this had fallen to 59.3%; and by 2021 it was 46.2%, less than half the population (and by the way, most of these were not members of the Church of England). This coincided with a rise in people reporting 'no religion', from 14.6% to 25.2% to 37.2%. Muslims had risen from 4.9% in 2011 to 6.5% in 2021, Hindus from 1.5% to 1.7%, Sikhs from 0.8% to 0.9%, while Jews had stayed the same at 0.5%.[9]

Religion and belief is a protected characteristic under the Equality Act and the Church of England has an established position in our Constitution. You might

7 This appeared in a speech by the Minister 'for common sense' but not in any publication.
8 *The Times*, 14 May 2024, p 25.
9 Office for National Statistics, Statistical Bulletin, *Religion, England and Wales: Census 2021.*

think that Anglicans would feel that they are still well protected by the law. But an academic study of perceptions of religious discrimination in 2011 reported that some Christians felt that Christianity was being marginalised and other religion or belief groups were being treated more fairly; on the other hand, non-religious groups felt that Christianity and religion in general were still privileged in ways which could result in unfair treatment for non-believers.[10] I don't myself think that either of them were right.

But we cannot forget that there had to be an inquiry into antisemitism in the Labour Party and serious steps taken to eradicate it; that there have been accusations of islamophobia in the Conservative party; that religious tensions have undoubtedly been raised by current events in Israel, the West Bank and Gaza; and that government ministers have not always appeared even-handed in their commentary upon them.

So we can see that each of the five great British values is not as secure as we might have thought ten years ago. However, I do not wish to preach doom and gloom. The values of democracy, the rule of law, fundamental rights, equal treatment, and toleration for those who hold different beliefs from ours are well developed in our institutions and in our society. I believe that the government

[10] Paul Weller, Kingsley Purdam, Nizala Ghanea and Sariya Cheruvallil-Contractor, *Religion or Belief, Discrimination and Equality,* London, Bloomsbury, 2013, pp 208, 210.

was right to describe these as British values. I would myself be inclined to include a sixth – which is social justice, the responsibility of society to ensure that everyone – and in particular every child - has at least a minimum standard of living, housing, education, and health care. But I recognise that that is more politically contentious than the other five. I hope and pray that we can get back to according them all the respect which they deserve.